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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kitsukawa	)	Art Unit: 2623
	)	
Serial No.: 09/802,632	)	Examiner: Manning
	)	
Filed: March 9, 2001	)	50P4112.01
	)	
For: VIRTUAL CHANNEL SYSTEM FOR WEB	)	May 10, 2006
APPLIANCE, INCLUDING INTERACTIVE	)	750 B STREET, Suite 3120
TELEVISION	)	San Diego, CA 92101
	)	

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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**(1) Real Party in Interest**

The real parties in interest are Sony Corp. and Sony Electronics, Inc.

**(2) Related Appeals/Interferences**

No other appeals or interferences exist which relate to the present application or appeal.

**(3) Status of Claims**

Claims 1-8 are pending and finally rejected, which rejections are appealed, and claims 9-13 have been canceled.

**(4) Status of Amendments**

No amendments are outstanding.

**(5) Summary of Claimed Subject Matter**

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 recites an interactive television (reference numeral 22, figures 1 and 2; page 6, line 17) that has a television tuner (36, figure 2; page 7, line 20) and a display (32, figures 1 and 2; page 6, line 22) communicating with the tuner for displaying broadcast television signals. A virtual channel memory (44,

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figure 2; page 8, line 10) communicates with the display and stores Web pages associated with virtual channel numbers. As shown in figure 3 and discussed on page 11, lines 5-22, the virtual channel numbers are selectable for presentation on the display and the Web pages are periodically received in the virtual channel memory. The ITV of Claim 1 also includes a user data input memory (44, supra) that stores user demographic information input by the user, page 12, lines 14-22 and figure 4) which is to establish what Web page is stored in the virtual channel memory.

Claim 2 recites an interactive television, supra, that has a video display, supra, a television tuner, supra electrically associated with the display, and a virtual channel memory, supra, associated with the display. The memory stores Web pages associated with virtual channel numbers, and the virtual channel numbers can be selected for displaying the virtual channels on the video display, supra. The Web pages are periodically received in the virtual channel memory, supra, with virtual channels being established on user responses to prompts querying personal user demographics and viewer preferences, supra.

Claim 5 requires an interactive television system that has a Web server (14 and/or 18, figure 1; page 5, lines 12-23) and a television signal source (28, figure 1; page 6, line 19) and an interactive television, supra. The interactive television receives information from the Web server and the television signal source and includes a virtual channel memory, supra, that in turn includes a computer page having an associated virtual channel. The virtual channel is selectable to display the computer page using the interactive television, and at least one virtual channel is established at least in part based on user responses to queries for personal demographic data, supra.

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**(6) Grounds of Rejection to be Reviewed on Appeal**

All pending claims (1-8) have been rejected under 35 U.S.C. §103 as being unpatentable over Williams et al., USPN 5,977,964 (hereinafter "Williams") in view of Matthews, III et al., USPN 5,914,746 (hereinafter "Matthews") and further in view of Knee et al., USPP 2005/0155056 (hereinafter "Knee").

**(7) Argument**

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Applicant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, id., page 49979.

The claims as amended require that the demographic information is input by the user, with Appellant observing that the demographic data alleged to be in Williams is not input by the user but rather is algorithmically determined by the controller, meaning that Williams relies on algorithmically-determined demographic information to remain unobtrusive to the user. Applicant has pointed out that as a consequence, modifying Williams to accept direct input user demographic information would frustrate this purpose of Williams and, hence, would be improper, see MPEP §2143.01 (citing In re Gordon).

The current rejections acknowledge the lack of user demographic input in Williams, but attempt to remedy the shortfall by introducing the user-input demographics of Knee, proffering, as a suggestion to

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combine, Knee's alleged teaching of a "systematic approach to gathering user information for the targeting of programming".

As an initial matter, paragraph 7 of Knee does not mention "targeting of programming" but rather explains that it is for targeting advertising, a narrower proposition, and for taking unnamed "action in program guides". In any case, the problem with the proffered suggestion to combine is that Williams does not appear to be interested in targeting advertising. Stated differently, the relied-upon "stated advantages" of Knee do not appear to have relevance to Williams, which is instead directed to unobtrusively and automatically configuring a TV system based on a user's actual interactions as monitored by the system, see, e.g., col. 2, lines 10-15 and col. 17, lines 23-33 of Williams, extolling the virtues of automatically configuring a system based simply on monitoring a user's interactions with it. Plainly, to constitute a legitimate suggestion to combine, "stated advantages" of a secondary reference must bear some relevance to the purpose of the primary reference sought to be modified; otherwise, every patent would be combinable with every other patent, since almost every patent extols its individual advantages in its own vacuum.

Additionally, introducing Knee does not rebut Applicant's previous point that, notwithstanding whether prior art exists showing user input of demographic data, it would defeat the purpose of Williams to alter it to require user demographic input. This is because the entire point of Williams is to programmatically determine demographics in a way that Williams believes is designed to be optimal, a purpose that would be frustrated by permitting user discretion in defining his or her own demographics.

The Advisory Action returns two responses to the above, neither of which glosses the *prima facie* case with a patina of legitimacy. First, the Examiner contends that "it is well known to utilize various types of information gathering techniques in one system", but since Appellant is not claiming "various types of


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information gathering techniques" and, as importantly, since the allegation is unaccompanied by any evidence in support, this contention is inconsequential. Second, the examiner alleges that Williams, col. 16, lines 29-34 "suggests the inputting of information by the user", but the relied-upon teaching must be read in context. What Williams is discussing is simply that apart from its automatic determination of user demographics, the user can indeed input commands as is conventionally done. None of the relied-upon portions of Williams, however, remotely suggests that the actual user input is used as a substitute for the demographic algorithm that is at the heart of Williams; indeed, this latest relied-upon portion of Williams is most legitimately read as supporting Appellant's case, not that of the Examiner.

Respectfully submitted,

  
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#### APPENDIX A - APPEALED CLAIMS

1. An interactive television, comprising:
  - a television tuner;
  - a display communicating with the tuner for displaying broadcast television signals;
  - at least one virtual channel memory communicating with the display, the virtual channel memory storing Web pages associated with virtual channel numbers, the virtual channel numbers being selectable for presentation on the display, the Web pages being periodically received in the virtual channel memory; and
  - at least one user data input memory, the user data input memory storing at least some user demographic information input by the user, the user demographic information being at least partially used to establish what Web page is stored in the virtual channel memory.
  
2. An interactive television, comprising:
  - a video display;
  - a television tuner electrically associated with the display; and
  - at least one virtual channel memory associated with the display, the memory storing Web pages associated with virtual channel numbers, the virtual channel numbers being selectable for displaying the virtual channels on the video display, the Web pages being periodically received in the virtual channel memory, at least one virtual channel being established at least in part on user responses to prompts querying personal user demographics and viewer preferences.

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3. The interactive television of Claim 2, further comprising:

at least one user data input memory, the user data input memory storing at least some user demographic information, the user demographic information being at least partially used to establish the Web page stored in the virtual channel memory.

4. The interactive television of Claim 3, wherein the user data input memory further includes

at least some user preferences, the user input preferences being at least partially used to establish the Web page stored in the virtual channel memory.

5. An interactive television system, comprising:

at least one Web server;

at least one television signal source; and

at least one interactive television, the interactive television receiving information from the Web server and the television signal source, the interactive television including at least one virtual channel memory, the virtual channel memory including at least one computer page having an associated virtual channel, the virtual channel being selectable to display the computer page using the interactive television, at least one virtual channel being established at least in part based on user responses to queries for personal demographic data.

6. The interactive television system of Claim 5, wherein the interactive television further comprises:

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at least one user data input memory, the user data input memory including at least some user demographic information, the user demographic information being at least partially used to establish the page stored in the virtual channel memory.

7. The interactive television system of Claim 5, wherein the user data input memory further includes at least some user preferences, the user input preferences being at least partially used to establish the page stored in the virtual channel memory.

8. The interactive television system of Claim 5, wherein the computer page is a Web page.

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**APPENDIX B - EVIDENCE**

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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**APPENDIX C - RELATED PROCEEDINGS**

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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